

FILED
in the Clerk's Office
U.S. District Court,
EDNY, Brooklyn
Dec 30, 2022, 6:41 PM
Pro Se Office via
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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BRAINWAVE SCIENCE, INC.

*rec. in p drive 1/10/23 rg

Plaintiff

Affidavit Comprising Brief Numbered
Statements by Defendant Dr. Lawrence A.
Farwell in Response to Plaintiff's Motion for
Partial Summary Judgment of December 16,
2022 and Statement of Undisputed Material
Facts

- against -

Civil Action No.: 21-cv-4402 (BMC-RLM)

ARSHEE, INC., DR. LAWRENCE A.
FARWELL, DR. THIERRY MAISON and
BRAIN FINGERPRINTING FOUNDATION

Defendants.

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Dr. Lawrence A. Farwell¹, being duly sworn, declares under penalty of perjury as follows:

1. This document refers to six software programs that are now before this Court as evidence in this case, cited along with the source where the evidence is located.
2. Dr. Larry Farwell's Application is located in two places. Dr. Larry Farwell's Application is integrated into the Visual Studio /Microsoft .NET framework is located on Dr. Maison's TFS/ DevOps, to which Dr. Farwell no longer has access (Dr. Maison TFS, Dr. Farwell's 12/27/2022 Affidavit). This is provided to Mindfire by Dr. Maison granting access to his TFS to Mindfire, which Dr. Farwell has requested. Dr. Larry Farwell's Application that is not integrated into said environment is in a folder transmitted by Dr. Farwell to Mindfire by uploading to Dropbox and providing Mindfire with the link ("Dr. Farwell Dropbox"). Note that this is "Confidential Information" of Dr. Farwell per the Consulting Agreement with Mindfire, and consequently neither BWS not anyone else other than Mindfire is given access.
3. The six software programs that are now before this Court as evidence in this case and the sources where the evidence is located are as follows.
4. Farwell Brain Fingerprinting 3.0 (Dr. Farwell Dropbox) is a version of Dr. Farwell's Brain Fingerprinting software developed by Dr. Farwell in the early 1990s that Dr. Farwell applied at the FBI, the CIA, the US Navy, and in scientific research, scientific publications, and field applications in criminal investigations and counterterrorism operations around the world.
5. Farwell Brain Fingerprinting 4.0 (Dr. Farwell Dropbox) is a version of Dr. Farwell's Brain Fingerprinting software developed by Dr. Farwell in the early 2000s that Dr. Farwell applied in scientific research, scientific publications, and field applications in criminal investigations and counterterrorism operations around the world. It comprised the addition to 3.0 of a more advanced data analysis section.
6. Farwell Brain Fingerprinting 5.0, aka Neurodyne (Dr. Maison TFS) is a newer version of the Farwell Brain Fingerprinting software ported from versions 3.0 and 4.0 to the Visual Studio / Microsoft .NET environment and translated to the C# language. Dr. Maison developed it and gave it to Dr. Farwell. This is the software labeled "Dr. Larry Farwell's Application" in Plaintiff's CEO's Affidavit (EFS 20-2, Exhibits B, C, and D).
7. Farwell Brain Fingerprinting 6.0 (Dr. Maison TFS) is the software that Dr. Farwell sold, transferred, or demonstrated to clients and allowed scientific colleagues at the University of Canterbury to use in conducting research in collaboration with Dr. Farwell.
8. Dr. Maison BWS Software, aka "iCognitive" (Brainwave Science TFS) is the version of the software developed by Dr. Maison for BWS **before BWS obtained a copy of "Farwell Brain Fingerprinting 5.0" / "Neurodyne" / "Dr. Larry Farwell's Application" from Dr. Maison** on June 29, 2021. (BWS TFS).
9. BWS Fraudulently Modified Software, also aka "iCognitive" (Brainwave Science TFS) is the version of the software that BWS modified **to make it appear more similar to "Dr. Larry Farwell's Application" after BWS obtained a copy of "Dr. Larry Farwell's Application" / "Farwell Brain Fingerprinting 5.0" / "Neurodyne" from Dr. Maison** on June 29, 2021.
10. **The most obvious and easily detectable modification that BWS made to the Dr. Maison BWS Software in creating the BWS Fraudulently Modified Software was changing the**

¹ For the sake of clarity, I shall in some cases herein refer to myself in the third person.

background color from blue to green. The various versions of the software and revision histories, which are now in evidence before this Court (BWS TFS, Dr. Maison TFS), will reveal what other changes BWS made in order to make the BWS Fraudulently Modified Software more similar to Dr. Larry Farwell's Application than Dr. Maison BWS Software is to Dr. Larry Farwell's Application.

11. Because of the facts stated in above, the entire foundation of Plaintiff's claims in this lawsuit is based on fraud. Even if all of the statements that Plaintiff claims are "Undisputed Facts" (EFS #106-1) were true and undisputed – which they are not – that would not constitute grounds for a partial summary judgment, because the more fundamental "facts" on which such a judgment would be based are fraudulent fabrications by BWS, not facts.

12. In Judge Cogan's Order of 8/21/2022 the Court stated: "If Dr. Farwell's allegations about BWS fraudulently modifying its software prior to its submission to Codequiry are true, a fact that will only be known once discovery is concluded, then sanctions will be levied against BWS and the preliminary injunction will be lifted." Said allegations are true. Evidence now before this Court (Dr. Maison TFS, BWS TFS) will prove that said allegations are true. Therefore, whereas at the time of the preliminary injunction it was appropriate to provisionally take Plaintiff's demonstrably false statements regarding the software in question as fact, at this stage of the case the Court must consider the actual facts before the Court, which are in evidence now before this Court in Dr. Maison TFS and BWS TFS. In light of the actual facts now in evidence before this Court (Dr. Maison TFS, BWS TFS), a partial summary judgment in favor of Plaintiffs cannot be granted, since the evidence now before this court proves that Plaintiff's entire case is based on fraud.

13. The essential material statements bearing on the major facts at issue in this case in BWS' Statement of Undisputed Facts (EFS #106-1) are false. They are not facts, and they are certainly not undisputed.

14. Even if essential material statements bearing on the major facts at issue in this case in BWS' Statement of Undisputed Facts were true – which they are not – and they were undisputed – which they are not – these would be insufficient facts to warrant a summary judgment. To make a summary judgment in favor of Plaintiffs, this Court would have to accept as fact two other major things that are not facts, but rather false fabrications and fraud by BWS. The first of these is as follows. The foundation of Plaintiff's case in this lawsuit is a comparison between two sets of software code with respect to user interfaces and comparison in Codequiry (EFS #20).

15. One set of code is "Farwell Brain Fingerprinting 5.0" / "Dr. Maison BWS Software," "Neurodyne," the code developed by Dr. Maison and conveyed to Dr. Farwell, (Dr. Maison TFS), referred to in Plaintiff's documents as "Dr. Larry Farwell's Application" (EFS #20, #20-2, and Exhibits B, C, and D). An examination of Dr. Maison TFS will show, presumably, that this is in fact what Plaintiff Brainwave Science (BWS) represented it to be.

16. The other set of code Plaintiff represented as Dr. Maison BWS Software, aka "iCognitive" (Brainwave Science TFS); i.e., the version of the software developed by Dr. Maison for BWS **before BWS obtained a copy of "Farwell Brain Fingerprinting 5.0" / "Neurodyne" / "Dr. Larry Farwell's Application" from Dr. Maison.**

17. In fact, an examination of the relevant evidence now before this Court in BWS TFS will show that the second set of software that BWS submitted for the comparison was NOT the software described in ¶ 3c above that BWS represented it to be. Rather, it was "BWS Fraudulently Modified Software," (BWS TFS) which BWS also called "iCognitive" (BWS TFS). This is the version of the software that BWS modified to make it appear more similar to "Dr. Larry Farwell's Application"

after BWS obtained a copy of “Dr. Larry Farwell’s Application” / “Farwell Brain Fingerprinting 5.0” / “Neurodyne” from Dr. Maison on June 29, 2021. (BWS TFS).

18. Because of the facts stated above, the entire foundation of Plaintiff’s claims in this lawsuit are based on fraud. Even if all of the statements that Plaintiff claims are “Undisputed Facts” (EFS #106-1) were true and undisputed – which they are not – that would not constitute grounds for a partial summary judgment, because the more fundamental “facts” on which such a judgment would be based are fraudulent fabrications by BWS, not facts. This is established in detail in Dr. Farwell’s Affidavit of 12/27/2022.

19. A second reason that, even if the statements that Plaintiff claims are “Undisputed Facts” (EFS #106-1) were true and undisputed – which they are not – this still would not constitute grounds for a partial summary judgment is as follows. In order for there to be grounds for a summary judgment, the software that Dr. Maison conveyed to Dr. Farwell – referred to variously as “Farwell Brain Fingerprinting 5.0,” “Dr. Maison BWS Software,” “Neurodyne,” and “Dr. Larry Farwell’s Application” – must contain BWS’ proprietary information, which it does not. Dr. Farwell’s Affidavit of 2022/12/27 provides ample evidence that said Farwell Brain Fingerprinting software does not contain BWS’ proprietary information, evidence that is now before this Court (Dr. Maison TFS, BWS TFS) and is scheduled to be compared shortly by Mindfire. At a minimum, this issue is not an “undisputed fact.” It is disputed. Without this false contention of BWS being accepted as fact, there are no grounds for a partial summary judgment.

20. A third reason why grounds for a summary judgment in favor of Plaintiffs are lacking in this case will be discussed below.

21. The available evidence comprises two types of software. Farwell Brain Fingerprinting 3.0 and 4.0 comprise source code that can be printed in a document and executable code that can be stored on a computer hard drive, uploaded to a repository like Dropbox, and downloaded in its entirety. Farwell Brain Fingerprinting 5.0, Dr. Maison BWS Software, and BWS Fraudulently Modified Software are integrated into the Visual Studio Environment and Microsoft .NET. A complete account of the software cannot be simply downloaded as a text or executable file, incorporated in a document, and distributed. The full account of the software, including all the versions and the revision history, must be accessed in the environment in which it exists. For Farwell Brain Fingerprinting 5.0 / Dr. Larry Farwell’s Application this is Dr. Maison’s TFS repository. For the Dr. Maison BWS Software and the BWS Fraudulently Modified Software this is BWS’ TFS repository. The only way to access this software for testing, evidence, or any other purpose is for Dr. Maison and Brainwave Science to provide access to their respective TFS repositories to Mindfire. This is a simple process that takes less than five minutes (Dr. Farwell’s 12/27/2022 Affidavit; EFS #89, 1:20 – 2:20).

22. In its original Complaint (EFS #1) and MOL in Support of Motion for Summary Judgment (EFS #20) and Ika’s Affidavit (EFS #20-2 and Exhibits B and D thereto), Plaintiff Brainwave Science defrauded this Court in the following way.

23. Plaintiff had Dr. Maison BWS Software in their TFS repository, as Dr. Maison had developed it for BWS (EFS #20).

24. BWS obtained from Dr. Maison a copy of “Brain Fingerprinting 5.0” / “Neurodyne” / “Dr. Larry Farwell’s Application” from Dr. Maison (EFS #20).

25. Then BWS fraudulently modified “Maison BWS Software” / “iCognitive” to make it more similar to “Dr. Larry Farwell’s Application” (BWS TFS, Dr. Maison TFS, EFS #24, Dr. Farwell 12/27/2022 Affidavit).

26. One way in which the software was modified was to change the background color of the user interface. All versions of “Dr. Maison BWS Software” / “iCognitive” before June 29, 2021 when BWS obtained “Dr. Larry Farwell’s Application” from Dr. Maison (EFS #89 p. 1:26 - 28), had a blue background (EFS #89 1:20 – 2:9). “Dr. Larry Farwell’s Application” had a green background. BWS Modified “iCognitive” to change the background from blue to green to match “Dr. Larry Farwell’s Application” (Dr. Farwell 12/27/2022 Affidavit; EFS #89 1:20 – 2:9).

27. Then Ika developed Ika Affidavit (EFS 20-2) and Exhibit D thereto to show the two user interfaces side by side. BWS falsely represented that the software compared to “Dr. Larry Farwell’s Application” (Dr. Maison TFS) was the original, unmodified “iCognitive” (BWS TFS) developed by Dr. Maison for BWS. In fact, **the software actually compared was the Fraudulently Modified BWS Software (which BWS also called “iCognitive”), which had been specifically modified to more closely resemble “Dr. Larry Farwell’s Application”.** This can be readily proven with evidence now before this Court, by Mindfire comparing the various versions, dates, and modification histories of “Dr. Larry Farwell’s Application” in Dr. Maison’s TFS with the various versions, dates, and modification histories of “iCognitive” in BWS’ TFS. Mindfire already has, or will shortly have, access to Dr. Maison’s TFS and BWS’ TFS in order to accomplish the court-ordered comparison. This is a necessary step for Mindfire to accomplish the comparison task described in the Scope of Work, because to compare different software programs Mindfire must know and be able to prove definitively which software programs were compared.

28. Examining the modification histories and identifying the several versions of each software program in Dr. Maison TFS and BWS TFS is a necessary prerequisite for Mindfire conducting its comparison tests. Otherwise, Mindfire will not know what is being compared to what. It is necessary for Mindfire to differentiate between “Dr. Maison BWS Software” and “BWS Fraudulently Modified Software” in order to know what is actually being compared to Dr. Farwell’s software. (Dr. Maison TFS, BWS TFS). Otherwise, any comparison would be meaningless or worse. If a comparison based on false representations by BWS regarding what software is being compared – as the original comparison that formed the foundation of Plaintiff’s Complaint was – then the comparison would be fraudulent, like the original comparison that formed the foundation of Plaintiff’s case.

29. BWS also submitted “Dr. Larry Farwell’s Application” (Dr. Maison TFS) and the “Fraudulently Modified BWS Software” (BWS TFS) to Codequiry to test the similarity between the two. Again, BWS falsely represented that the software compared to “Dr. Larry Farwell’s Application” was the original, unmodified software (Dr. Maison BWS Software) developed by Dr. Maison for BWS. In fact, **the software actually compared was the Fraudulently Modified BWS Software (which BWS also called “iCognitive”), which had been specifically modified to more closely resemble “Dr. Larry Farwell’s Application”.**

30. BWS also submitted only part of the “iCognitive” (BWS TFS) and “Dr. Larry Farwell’s Application” (Dr. Maison TFS) code to Codequiry (Ika Affidavit EFS #20-2, Exhibit D, pages 7, 8.). BWS did not submit for comparison the parts of the software that were totally different between the two, namely the parts that communicated with the two different headsets used by BWS and Dr. Farwell (BWS TFS, Dr. Maison TFS).

31. In the Ika Affidavit (EFS 20-2, Exhibit D, p. 8) the navigation page has been changed from blue to green in the BWS software on the left of the page. The Replay function that overlays the

navigation page still has a blue background, like all screens in all versions of BWS Software before BWS obtained the code with the green background from Dr. Maison and modified their code to match. This may be because the Replay function involves real-time activities (such as displaying ongoing EEG), and no one at BWS after Dr. Maison's exit has the necessary software development skill to modify this complicated code. The trivial navigation and data entry pages are easy to modify; the actual functional pages are more difficult. In any case, this screenshot illustrates that BWS modified the Dr. Maison BWS Software to change the blue background to a green background to make it appear more similar to Dr. Larry Farwell's Application. (The Replay function was copied from the "Demo" function in Farwell Brain Fingerprinting 3.0, and has an identical user interface to the same.) (Dr. Maison TFS, BWS TFS).

32. **The fraud by BWS in generating BWS' Fraudulently Modified Software can readily be exposed in the course of Mindfire's court-ordered comparisons of the software by examining the dates and version history in BWS TFS and Dr. Maison TFS, which is an integral and necessary part of the court-ordered comparison.** This is a prerequisite for Mindfire to make any software comparisons. Mindfire cannot make meaningful comparisons until they have determined which software is being compared. (Dr. Farwell 12/27/2022 Affidavit, Dr. Maison TFS, BWS TFS).

33. **BWS can defraud this court a second time only if the Court cooperates in this fraud by allowing BWS to refuse to provide Mindfire access to BWS TFS and instead proffers the Fraudulently Modified BWS Software and falsely represents that it is the original, unmodified Dr. Maison BWS Software that Dr. Maison provided to Dr. Farwell.** This would simply be a repeat of the fraud perpetrated by BWS that forms the foundation of this lawsuit. (Dr. Farwell's 12/27/2022 Affidavit).

34. Note that it is easy to fabricate or fake source code and executable files stored on computer disk or transferred electronically. **Both the content and the dates of such files can be fraudulently altered. However, the versions, version history, and modification history in Brainwave TFS and Dr. Maison TFS cannot be faked or fraudulently modified. The version history is embedded in the TFS data, and cannot be modified. For this reason, it is necessary for Mindfire to directly access BWS TFS and Dr. Maison TFS, and not simply assume that BWS' representations regarding the software they may proffer outside TFS are truthful** (Dr. Maison TFS, BWS TFS, Dr. Farwell's 12/27/2022 Affidavit).

35. **Ika and Tomkins lied about the software in the documents that are the foundation of this case (EFS #1, EFS #20, EFS #24). This can now be readily proven with evidence now before this Court in the BWS TFS and the Dr. Maison TFS. They could certainly defraud this Court again if this Court takes their lies as fact rather than considering the actual evidence that is now before this Court in Dr. Maison TFS and BWS TFS** (Dr. Farwell's 12/27/2022 Affidavit).

36. In the Codequiry test and screenshots that are the foundation of Plaintiff's Complaint, Plaintiff lied to this Court and falsely represented that the code submitted to Codequiry was Dr. Maison's BWS Code, the software that Dr. Maison developed for BWS. In fact, the code submitted to Codequiry and represented in the screenshots (EFS #20, Exhibit D) was BWS Fraudulently Modified Software, which had been changed from a blue background to a green background to more closely match Dr. Larry Farwell's Application to which it was compared.

37. The only way to prevent BWS from defrauding this Court again is to use the actual software in BWS TFS for the comparisons, since the TFS environment contains a record of the software, dates, and versions that, unlike files stored on BWS disks, cannot be faked.

38. The specific method for proving that the foundation of this lawsuit presented by BWS is fraudulent is to show that BWS did not have any version of iCognitive with a green background before June 29, 2021, as follows (Dr. Farwell's 12/27/2022 Affidavit; EFS # 89, 1:20 – 2:20).

39. June 29, 2021 is the date BWS received "Dr. Larry Farwell's Application" from Dr. Maison – and subsequently modified their "iCognitive" code to have a green background to match Dr. Larry Farwell's Application (EFS #89, page 2, 1 – 9).

40. To be valid, the proof regarding which software version is being compared in the court-ordered comparisons must include Visual Studio access to the files that create the visual interface (XAML files) with a review of the TFS change history of those files. Brainwave Science is using an on-premises TFS server. To be valid, the proof must also include a validation of the application installer program analyzed for digital signature, modified and creation date, and installed to verify the background color. The digital certificate used for code-signing is provided by DigiCert (a Microsoft-approved code-signing certificate vendor) and is timestamped with web time service. This means, in practice, that the time of different modifications and versions cannot be faked if the proper procedure outlined here to find the facts is followed by the finder of fact. (Dr. Farwell's 12/27/2022 Affidavit; EFS # 89, 1:20 – 2:20).

41. Any failure of BWS providing a functioning application with a green background properly traceable to Brainwave Science development environment (TFS), properly dated before June 29, 2021, with a digital signature, will provide proof that Ika's Affidavit (EFS #20-2, Exhibit D), and the entire foundation of this lawsuit were fabricated and fraudulent.

42. Any excuses from BWS as to why they will not allow this Court, through Mindfire, to access the definitive evidence now before this Court, as described in above – and any demands that this Court should simply accept BWS' representations as fact, regarding the substantive matters at hand regarding which versions of software are being submitted to the comparison – rather than accessing the actual evidence, will be easily recognized as a transparent attempt to obstruct this Court's mission as a finder of fact (Dr. Farwell 12/27/2022 Affidavit; EFS # 89, 1:20 – 2:20).

43. There is a second reason, in addition to the above-described fraud by BWS, why Dr. Larry Farwell's Application is similar to and has similar user interfaces to various versions of BWS Software. The reason is this: Both the software designed by Maison for BWS and the software designed by Maison for Dr. Farwell were accomplished by porting Dr. Farwell's pre-existing Farwell Brain Fingerprinting 3.0 and 4.0 to a different development environment and programming language (Dr. Farwell's 12/27/2022 Affidavit, BWS TFS, Dr. Maison TFS).

44. BWS stated "BWS' technology team members located an online demonstration video wherein Farwell is depicted demonstrating a system with a nearly identical user interface to that designed by Maison for BWS" (EFS 20, P. 3, 1 – 9). The reason for this is described below.

45. All versions of software that implement Dr. Farwell's Brain Fingerprinting invention, including Dr. Larry Farwell's Application (the version that BWS compared with BWS Software) and the Maison BWS Software, had the same two functions: 1. Measuring brainwaves; and 2. Analyzing brainwaves (Dr. Maison TFS, Dr. Farwell's 12/27/2022 Affidavit).

46. All versions of the software have two user interfaces that correspond to the two functions of the program: the Brainwave Measurement User Interface and the Brainwave Analysis User Interface (Dr. Maison TFS, Dr. Farwell Dropbox, Dr. Farwell's 12/27/2022 Affidavit).

47. The Brainwave Measurement User Interface and the Brainwave Analysis User Interface for all versions of such software at issue in this case display all of the brainwave data and other data that

are measured, analyzed, computed, concluded, determined, and recorded. These data include subjects' brainwaves, subjects' reaction times and accuracy, conclusions regarding whether the tested information is stored in the subject's brain, etc. In short, everything of substance in the entire program is displayed on these two user interfaces (Dr. Maison TFS, Dr. Farwell's 12/27/2022 Affidavit).

48. **All of the data that are measured, analyzed, computed, concluded, determined, and recorded, in all versions of the BWS Software, are identical to the same in Dr. Farwell's Farwell Brain Fingerprinting 3.0 and Farwell Brain Fingerprinting 4.0, both of which existed before Brainwave Science was founded in 2012.** The software Dr. Maison produced for Brainwave Science was simply a copy and translation to a new language and platform of Farwell Brain Fingerprinting 3.0 (for data analysis) and Farwell Brain Fingerprinting 4.0 (for brainwave measurement) (Dr. Maison TFS, Dr. Farwell Dropbox, Dr. Farwell's 12/27/2022 Affidavit).

49. **The Brainwave Measurement User Interface for all versions of the BWS Software is identical to the Brainwave Measurement User Interface of Farwell Brain Fingerprinting 4.0, which existed before BWS was founded** (BWS TFS, Dr. Maison TFS, Dr. Farwell Dropbox).

50. **The Brainwave Analysis User Interface for all versions of the BWS Software is identical to the Brainwave Analysis User Interface of Farwell Brain Fingerprinting 3.0, which existed before BWS was founded.** (BWS TFS, Dr. Maison TFS, Dr. Farwell Dropbox).

51. The user interfaces for Dr. Larry Farwell's Application that existed before BWS did and the user interfaces for the software that BWS used in its comparisons that form the foundation of this lawsuit are identical. Without a time machine, Dr. Farwell could not possibly have stolen this "BWS proprietary" information from BWS in 2019 and gone back in time and inserted it into his software in 1993 and 2007 (Dr. Farwell's 12/27/2022 Affidavit, Dr. Farwell Dropbox, BWS TFS, Dr. Maison TFS).

52. Specifically, the Brainwave Measurement User Interface in the Dr. Maison BWS Software – the "Dr. Larry Farwell's Application" that BWS used in its comparisons (EFS #20, EFS 20-2, Exhibit D) – and the Farwell Brain Fingerprinting 4.0 Brainwave Measurement User Interface – the version that existed before BWS existed -- are identical. (Dr. Maison TFS, Dr. Farwell Dropbox, and screenshots in Dr. Farwell's 12/27/2022 Affidavit). Both contain 7 identical plots of brainwaves and 38 identical entries in tables. All of these are in the same layout on the page. There are only very minor differences: Farwell Brain Fingerprinting 4.0 contains three additional rows of algorithms for eliminating noise that are not included in BWS. Each of the two contains 2 – 3 additional buttons for navigation or adjustment. Background colors and relative sizes of features vary.

53. The Farwell Brain Fingerprinting 3.0 Brainwave Analysis User Interface and the BWS Brainwave Analysis User Interface Data Display Section both include the following exact same items, in the same layout on the page. (Dr. Farwell's 12/27/2022, Dr. Farwell Dropbox, BWS TFS). Dr. Farwell's 12/27/2022 Affidavit has screenshots of the same.

54. A brainwave plot with the three types of brain responses displayed in the same respective colors and format. (Dr. Farwell's 12/27/2022 Affidavit, Dr. Farwell Dropbox).

55. Two summary results, a Determination and a Statistical Confidence, displayed in the same format. (Dr. Farwell's 12/27/2022 Affidavit, Dr. Farwell Dropbox).

56. Tables with a total of 30 cells, all containing the same information in Farwell Brain Fingerprinting 3.0 and Dr. Maison BWS Software, with minor differences in the layout (rows and columns reversed). (Dr. Farwell's 12/27/2022 Affidavit, Dr. Farwell Dropbox).

57. **Long before BWS existed there were numerous “online demonstrations in which Farwell is depicted demonstrating a system with a nearly identical user interface to that designed by Maison for BWS.”** These online demonstrations were of Farwell Brain Fingerprinting 3.0 and 4.0 (Dr. Farwell 12/27/2022 Affidavit, Dr. Farwell Dropbox). This includes both of the two user interfaces that display the two functions of all versions of such software and all of the data that are measured, analyzed, computed, concluded, determined, and recorded by all of the software programs at issue in this case. Both Brainwave Measurement and Brainwave Analysis User Interfaces were virtually identical between multiple online demonstrations by Dr. Farwell that took place before BWS existed and the user interface of the software that Dr. Maison developed for BWS (and also the Farwell Brain Fingerprinting 5.0 software that Dr. Maison developed for Dr. Farwell and the BWS Fraudulently Modified Software). Dr. Farwell’s Affidavit of 2022/12/27 at ¶ 117 lists 12 examples of such online demonstrations, with links to online sources.

58. If “identical user interfaces” means that there has been plagiarism, then all versions of BWS Software are plagiarized from Farwell Brain Fingerprinting 3.0 and 4.0, which existed before BWS did. If the software that Dr. Maison provided to Dr. Farwell (“Farwell Brain Fingerprinting 5.0” / “Dr. Larry Farwell’s Application”) was plagiarized from anywhere, then it was plagiarized from Farwell Brain Fingerprinting 3.0 and 4.0, and not from BWS (Dr. Maison TFS, BWS TFS, Dr. Farwell Dropbox).

59. If there are any “Trade Secrets” in the “software code, user interfaces, algorithms” (Ika Affidavit, EFT 20-2, p. 4, par. 10 – 11) – or any of the computations, measurements, methods, statistics, mathematics, know-how, features, results, or data in the BWS Software – then these are Trade Secrets of Dr. Farwell embodied in Farwell Brain Fingerprinting 3.0 and 4.0 and his documents constituting the specifications for the same (Farwell Dropbox, BWS TFS, Dr. Maison TFS).

60. There is controversy over the timing of the development of Farwell Brain Fingerprinting 5.0 and the Dr. Maison BWS Software – which came first, if they overlapped, if one contributed to the other, etc. Regardless of these considerations, both Farwell Brain Fingerprinting 5.0 (“Dr. Larry Farwell’s Application”) and Dr. Maison BWS Software comprise simply porting Farwell Brain Fingerprinting 3.0 and 4.0, according to the Brain Fingerprinting Specifications (Dr. Farwell’s 12/27/2022 Affidavit and Exhibits CAA, CAB, and CAC thereto) provided by Dr. Farwell to Dr. Maison, to a different platform and a different language.

61. Everything in both Brain Fingerprinting 5.0 / Dr. Larry Farwell’s Application and Dr. Maison BWS Software is open source and in the public domain, except for the respective sections that communicate with the respective different headsets. Everything that the two programs have in common is in the public domain, so the discussions about the relationship between the two programs do not change the fact that Dr. Maison’s entire contribution to Dr. Larry Farwell’s Application is in the public domain and does not comprise anything developed at BWS (except the headset communication developed by Dr. Maison for Dr. Farwell, which is not open source but has no relationship to BWS’ software). (Maison TFS, BWS TFS, Farwell Dropbox).

62. Plaintiff claims that “Brainwave took reasonable steps to keep its trade secret information which derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by other persons.” (EFS #106-6, p. 11) That statement is not supported by the evidence. The BWS Software was released to a public domain source at 6:15 PM on 9/10/2017 from IP address 65.52.55.39 in Chicago, using the credentials of BWS employee Karuna Raja, who was in Southborough, MA at the time. (EFS #80, p. 4). This is documented with screenshots in Dr. Farwell’s 12/27/2022 Affidavit, Exhibit CAD. In his Affidavit (ECS 20), Ika

admitted that the BWS Software was uploaded to the internet, but falsely stated that it was uploaded to a secure cloud server. Dr. Maison later downloaded the software from a public source on the Internet (EFS #106-3, Exhibit A, p. 11 – 12).

63. All of the methods, algorithms and computations for the two functions of the program, Brainwave Measurement and Brainwave Analysis, were identical in the Dr. Maison BWS Software to Farwell Brain Fingerprinting 3.0 and 5.0. This is because Dr. Maison did the same thing to produce the Dr. Maison BWS Software as he did to produce Dr. Larry Farwell's Application / Brain Fingerprinting 5.0: He ported Dr. Farwell's code from Farwell Brain Fingerprinting 3.0 and 4.0, along with associated detailed specifications, patents, and publications, to a different language – C # – and a different environment – Microsoft Visual Studio and Microsoft .NET – and used different open-source software tools. The language, environment, and tools for the Dr. Maison BWS Software were identical to those of Farwell Brain Fingerprinting 5.0 / Dr. Larry Farwell's Application (Dr. Farwell's 12/27/2022 Affidavit, Dr. Farwell Dropbox, Dr. Maison TFS, BWS TFS).

64. The one segment of the Dr. Maison BWS code that was not open source and was not ported from Farwell Brain Fingerprinting 4.0 was the code that interfaced with the headset used by BWS, which was manufactured in Taiwan. Since the digital signal processors and communication protocols in this headset were different from the ones previously used by Dr. Farwell – and from other headsets and digital signal processors from other companies – Dr. Maison wrote custom code for interfacing with the Taiwanese headset that became a part of the Dr. Maison BWS Software system. (Dr. Farwell's 12/27/2022 Affidavit, Dr. Farwell Dropbox, Dr. Maison TFS, BWS TFS).

65. Dr. Maison's task in porting Farwell Brain Fingerprinting 4.0 to Dr. Maison BWS Software involved integration or stitching together of open-source software from various sources. This integration task is accomplished according to a blueprint or software development specifications. The integration task performed by Dr. Maison in porting Farwell Brain Fingerprinting 4.0 to Dr. Maison BWS Software was specified in detail in the open-source Brain Fingerprinting Measurement Specifications (Exhibit CAA) and the open-source Brain Fingerprinting Analysis Specifications (Exhibit CAB) and Randomization Algorithm (Exhibit CAC) provided by Dr. Farwell to Dr. Maison, as well as in the structure and integration of Farwell Brain Fingerprinting 4.0 and 3.0, which was also provided to Dr. Maison by Dr. Farwell. The integration or stitching together performed by Dr. Maison in developing Dr. Maison BWS Software was in the public domain and open source. (Dr. Farwell's 12/27/2022 Affidavit, Dr. Farwell Dropbox, Dr. Maison TFS, BWS TFS).

66. The user interfaces for the two functions of the program, Brainwave Measurement and Brainwave Analysis, were also virtually identical between Farwell Brain Fingerprinting 3.0, 5.0, and the Dr. Maison BWS Software. This is because Dr. Maison copied the user interfaces for Brainwave Measurement and Brainwave Analysis from Farwell Brain Fingerprinting 3.0 (for brainwave analysis) and 4.0 (for brainwave measurement) to the Dr. Maison BWS Software, just as he did for Brain Fingerprinting 5.0 / Dr. Larry Farwell's Application (Dr. Farwell's 12/27/2022 Affidavit, Dr. Farwell Dropbox, Dr. Maison TFS, BWS TFS).

67. There was one difference between the Dr. Maison BWS Software that Dr. Maison provided to Brainwave Science and the Farwell Brain Fingerprinting 5.0 software that Dr. Maison provided to Dr. Farwell. That is, the software sections for communicating with the two respective headsets used by the two programs were totally different, because BWS and Dr. Farwell used two totally different headsets. In both cases, this is the only part of the software that is not in the public domain. (Dr. Farwell's 12/27/2022 Affidavit, Dr. Farwell Dropbox, Dr. Maison TFS, BWS TFS).

68. Dr. Maison did not give Dr. Farwell the section of the Dr. Maison BWS Software that communicated with the headset, since the Farwell Brain Fingerprinting 5.0 system used a totally different headset. The rest of the Dr. Maison BWS Software and Farwell Brain Fingerprinting 5.0 were extremely similar – and in the open-source public domain – as both resulted from Dr. Maison porting and translating Farwell Brain Fingerprinting 3.0 and 4.0 to the respective newer versions, Farwell Brain Fingerprinting 5.0 (“Dr. Larry Farwell’s Application”) and the Dr. Maison BWS Software. (Dr. Farwell’s 12/27/2022 Affidavit, Dr. Farwell Dropbox, Dr. Maison TFS, BWS TFS).

69. All of the methods for eliminating noise in the signal in the Dr. Maison BWS Software were the same public-domain methods from Farwell Brain Fingerprinting 3.0 and 4.0 that Dr. Maison implemented in Farwell Brain Fingerprinting 5.0 (“Dr. Larry Farwell’s Application”). Dr. Maison copied and translated Dr. Farwell’s pre-existing code line for line to implement these. This is described in detail in Dr. Farwell’s 12/27/2022 Affidavit, and also documented in Dr. Farwell Dropbox, Dr. Maison TFS, and BWS TFS.

70. Like all Farwell Brain Fingerprinting versions – and all software for brainwave-based detection of concealed information, and in fact all software for measuring P300 or any other event-related brain potentials – the Dr. Maison BWS Software had multiple data-entry screens the purpose of which was for the user to enter details such as the subject name and number, the words to be displayed, etc. All of this is in the public domain. The appearance of these displays depends on which open-source software tools are used for the data entry functions. Since Farwell Brain Fingerprinting 5.0 / Dr. Larry Farwell’s Application and the Dr. Maison BWS Software used the same open-source tools to perform the same open-source data entry tasks, the displays were similar. Nothing in these data-entry screens or keyboards for data entry could be considered proprietary. (Dr. Farwell’s 12/27/2022 Affidavit, Dr. Farwell Dropbox, Dr. Maison TFS, BWS TFS).

71. In summary, the respective brainwave-analysis functions and algorithms are identical for Farwell Brain Fingerprinting 3.0 and the Dr. Maison BWS Software. The user interfaces for Farwell Brain Fingerprinting 3.0 and the Dr. Maison BWS Software report all of the same data. The two programs display the data in virtually identical ways. This is because Dr. Maison copied Dr. Farwell’s Farwell Brain Fingerprinting 3.0 and 4.0 code and detailed specifications – which were also included in Dr. Farwell’s patents and prior scientific publications – in developing the Dr. Maison BWS Software. The Dr. Maison BWS Software comprised simply porting Farwell Brain Fingerprinting 4.0 and the data analysis section of 3.0 to a different platform and a different language, using different open-source software development tools (Dr. Farwell Dropbox, Dr. Maison TFS, BWS TFS).

72. The Dr. Maison BWS Software was released to a public domain source at 6:15 PM on 9/10/2017 from IP address 65.52.55.39 in Chicago, using the credentials of Ika’s employee Karuna Raja, who was in Southborough, MA at the time (EFS #87). This is documented with screenshots in Exhibit CAD to Dr. Farwell’s 12/27/2022 Affidavit.

73. Dr. Maison later downloaded this software from a public source (EFS #106-3, Exhibit A, p. 11 – 12.). Thus, all of the Dr. Maison BWS Software that Dr. Maison used for any purpose was and is in the public domain. This fact shall be set aside in the below discussion, which will proceed on the premise that not all of the Dr. Maison BWS Software was in the public domain.

74. Plaintiff’s CEO Ika initially stated under oath in a hearing in this case on November 30, 2021 that none of the Dr. Maison BWS Software was public domain or open source. Plaintiff now acknowledges that Ika lied under oath, and in fact 90% of the Maison BWS Software is open source (Tomkins Affirmation, Exhibit A, 37:9-37:12).

75. 100% of the software that Dr. Maison provided to Dr. Farwell for Farwell Brain Fingerprinting 5.0 (“Dr. Larry Farwell’s Application”) is open source, due to Dr. Maison having deleted the proprietary portion of the Dr. Maison BWS software before providing software to Dr. Farwell. (This remains true regardless of whether or not Dr. Maison downloaded Dr. Maison BWS Software from a public source on the internet, as he has stated.) (Tomkins Affirmation, Exhibit A, 7:8-24)

76. Plaintiff has maintained Dr. Maison BWS Software in its possession in BWS’ TFS repository since Dr. Maison originally created it (BWS TFS).

77. Plaintiff BWS obtained a copy of Farwell Brain Fingerprinting 5.0 (also known as “Neurodyne” and “Dr. Farwell’s Application”) from Dr. Maison (Ika Affidavit EFS 20-2 P. 6 par 22).

78. Plaintiff Modified the Dr. Maison BWS code (later called iCognitive by BWS) and user interface to look more similar to the Dr. Larry Farwell’s Application / Farwell Brain Fingerprinting 5.0 user interface. Specifically, the Maison BWS Software had a user interface with a blue background, and Dr. Larry Farwell’s Application had a user interface with a green background. Plaintiff modified the Dr. Maison BWS code produced by Dr. Maison. This modification produced a new software version, the Fraudulently Modified BWS Software. The modifications were specifically designed to make this software look more similar to Dr. Larry Farwell’s Application, Brain Fingerprinting 5.0. One of the modifications was to change the background color of the user interface from blue to green.

79. Plaintiff then submitted the Fraudulently Modified BWS Software, aka “iCognitive,” to a software analysis in Codequiry to be compared with Dr. Farwell’s Application, Brain Fingerprinting 5.0.

80. Contrary to BWS’ representations, BWS did not submit all of the code in the two programs compared to Codequiry. Before submitting the code to Codequiry, BWS also eliminated sections of the code that were totally different between the Fraudulently Modified BWS Software and Farwell Brain Fingerprinting 5.0 / Dr. Farwell’s Application, namely the parts that communicated with the two different respective headsets. These also were the only parts of the code that were proprietary and not open source and public domain (Dr. Farwell’s 12/27/2022 Affidavit, EFS 20-2, Exhibit C).

81. Plaintiff falsely and fraudulently stated that the Codequiry comparison was between software developed by BWS (i.e., the Dr. Maison BWS Software) and “Dr. Larry Farwell’s Application,” Farwell Brain Fingerprinting 5.0, whereas in fact the comparison was with the Fraudulently Modified BWS Software – modified to look more similar to Dr. Larry Farwell’s Application after BWS obtained it from Dr. Maison.

82. With respect to purported new developments in software by Brainwave Science, the “Undisputed Facts” (EFS #106 – 1) in BWS’ Statement of Undisputed Material Facts (EFS #106-1) refer only to the false claim that BWS developed methods for eliminating noise from the signals. In Ika’s Affidavit he makes seven additional false claims regarding developments by BWS (Ika Affidavit, EFT 20-2, p. 4, par. 10 – 11). Dr. Farwell’s 12/27/2022 Affidavit and the Exhibits and other documents referred to therein demonstrate definitively that all of these claims by Ika are totally false. Dr. Farwell’s Affidavit documents the fact that all of the challenges that Ika claimed that BWS had addressed had been solved by Dr. Farwell prior to the existence of BWS, and BWS added nothing whatsoever to the pre-existing solutions. This is documented even more thoroughly in evidence now before this Court in Dr. Maison TFS, BWS TFS, and Dr. Farwell Dropbox.

83. Another reason, in addition to the above, why grounds do not exist for a summary judgment in favor of Plaintiffs is as follows. In order for there to be grounds for a summary judgment in favor of Plaintiffs for damages, Plaintiffs must have a legitimate, non-fraudulent business that can be damaged. Plaintiffs have no business other than fraud. This is documented extensively in Dr. Farwell's Report to the FBI and Supplement (EFS #80, Exhibit AAA). Despite numerous challenges to do so, Plaintiffs have never cited a single non-fraudulent business transaction that they have undertaken with any government agency or company or anyone else. BWS and its CEO Krishna Ika currently stand accused of fraud by authorities in four countries. These include a sworn affidavit by a South African General (EFS #80, Exhibit AR) regarding attempted fraud by Ika and BWS in South Africa and a sworn affidavit by one of the top experts in Brain Fingerprinting in the Middle East regarding fraud in by Ika and BWS in South Asia (EFS #80, Exhibit AR). Since BWS does not have and never has had any business other than fraud, any interference that the actions of Dr. Farwell may have on BWS' activities would serve to prevent crimes, not to damage legitimate business practices.

84. The following statements in Plaintiff's Statement of Undisputed Material Facts (EFS #106-1) are demonstrably false, or at least disputed.

85. BWS Statement #2 is false, or at least is disputed. "Brainwave is in the business of development, marketing and sales of technology solutions to international government agencies, and their respective vendors, in the National Security, Counterterrorism, Border Security, Human and Drug Trafficking, Criminal Justice, and Immigration Control sectors. (Complaint ¶9, Answer ¶9)."

86. Brainwave is not in said business. Brainwave does not have and never has had any legitimate business activities. Brainwave is in the business of attempting to defraud government agencies into engaging Ika and his employees to effect a technology transfer of Dr. Farwell's invention of Brain Fingerprinting or similar science and technology, whereas in fact they lack the necessary training, expertise, knowledge, and experience to do so. All of the following is thoroughly documented in Dr. Farwell's Report to the FBI (EFS #80, Exhibit AAA and the other Exhibits thereto). Neither Ika nor any of his employees has ever conducted a successful forensic science test in a real-world situation in the "National Security, Counterterrorism, Border Security, Human and Drug Trafficking, Criminal Justice, and Immigration Control sectors" or in the investigation of a real-world crime or terrorist act. Brainwave has not provided any evidence that they have ever conducted a single legitimate, non-fraudulent business transaction with "international government agencies" or anyone else. (Dr. Farwell's Affidavit of 12/27/2022, Exhibit DAAI and Exhibit DAAJ thereto, EFS #80, Exhibit AAA).

87. On the other hand, there is considerable evidence of fraud by Ika and Brainwave. This is documented extensively in Dr. Farwell's Report to the FBI and Supplement (EFS #80, Exhibit AAA). Despite numerous challenges to do so, Plaintiffs have never cited a single non-fraudulent business transaction that they have undertaken with any government agency or company or anyone else. (Dr. Farwell's Affidavit of 12/27/2022, Exhibit DAAI and Exhibit DAAJ thereto, EFS #80, Exhibit AAA).

88. Contrary to BWS statement #2, BWS and its CEO Krishna Ika currently stand accused of fraud by authorities in four countries (EFS #80, Exhibit AAA).

89. BWS statement #2 is disputed in a sworn affidavit by one of the top experts in Brain Fingerprinting in the Middle East who is a witness to fraud by Ika and BWS in South Asia (EFS #80, Exhibit AR).

90. BWS statement #2 is disputed by one of the top experts in Brain Fingerprinting in the Middle East who is a witness to fraud by Ika and BWS in South Asia (EFS #80, Exhibit AR).

91. BWS Statement #2 is disputed by authorities in Thailand (EFS #80, p. 34: 3.114 – 3.120) and Nigeria (EFS #80, p. 34: 3.121 – 35: 3.124) who are witnesses to fraud by Ika in those countries.

92. BWS statement #2 is contradicted by the following facts. In Ika's Affidavit (EFS #20-2) Plaintiff's CEO Ika initially stated under oath in a hearing in this case on November 30, 2021 that none of the Dr. Maison BWS Software was public domain or open source. Plaintiff now acknowledges that Ika lied under oath, and in fact 90% of the Maison BWS Software is open source (Tomkins Affirmation, Exhibit A, 37:9-37:12). In that same hearing, when Judge Cogan asked Ika (who was under oath) about BWS' business activities, Ika did not answer. Tomkins (who was not under oath) lied to the judge and falsely stated that BWS had sold at least three iCognitive systems to each of at least three clients, at a cost of \$400,000 per system. When confronted with the falsehood of that statement in a complaint to the Washington State Office of Disciplinary Counsel (ODC File #21-01031) that Dr. Farwell filed against Tomkins, Tomkins failed to provide a single example of any legitimate business activity, let alone the large, multiple transactions he had falsely claimed (Exhibit DAAI, Exhibit DAAJ, p. 3, ¶ 1 – 4 ¶ 1).

93. BWS Statement #4, second sentence, is false, or at least is disputed. "Defendant Dr. Lawrence A. Farwell (hereinafter 'Farwell') is an adult resident of the State of Washington (Complaint ¶3, Answer ¶3). Farwell served as BWS, LLC's Chief Scientific Officer from 2012 until November, 2016."

94. Dr. Farwell never had a contract to work for BWS as Chief Scientific Officer or in any other capacity. Dr. Farwell and his company Brain Fingerprinting Laboratories, Inc. owned 49% of Brainwave Science as founders' equity when it was formed. Ika attempted unsuccessfully to transfer the Brain Fingerprinting patents to the company without compensation by recording at the USPTO a document that was not executed by or even known to the undisputed owner of the patents at the time, American Scientific Innovations. It is undisputed that said document also failed as a patent assignment because it lacked any considerations flowing to the purported assignor. It is undisputed that every individual who has ever executed a patent assignment of said patents since 2002 has stated, in sworn affidavits, that Brainwave Science was never been assigned and has never owned said patents. It is undisputed that BWS's attorney Moreno at the time also said that BWS was never assigned any interest in said patents. It is undisputed that Brainwave Science, Inc. (the entity that BWS has falsely claimed owns said patents) has never been mentioned in any patent assignment recorded at the USPTO. All of this is documented in EFS #80, Exhibit AAA. Dr. Farwell parted company with Ika and BWS when he discovered that Ika's partner had been convicted in the US of essentially the same crime of which Ika now stands accused by authorities in Pakistan, South Africa, Nigeria, and Thailand – attempting to sell stolen high-tech secrets to a foreign government – and when Dr. Farwell observed illegal, unethical, and dishonest behavior by Ika. Ika unilaterally expelled the 49% minority shareholders in BWS LLC, including Dr. Farwell and his company, without consent or due process, and transferred their equity to himself without any compensation to the minority shareholders. Said transactions constitute felony theft as well as violation of securities laws. All of this is documented in EFS #80, Exhibit AAA and the exhibits thereto. Ika told demonstrable lies about all of this in his Affidavit (EFS 20-2). Ika's perjury in said document is relevant to the present discussion regarding the software, because it speaks to Ika's honesty, which is at issue with respect to his false statements about the software and fraudulent modification thereof that are the foundation of Plaintiff's complaint in this case.

95. BWS Statement #5 is false, or at least is disputed. “Brainwave has developed a technology to assist authorities in conducting humane questioning of subjects and exonerating wrongfully accused or convicted persons. The technology, iCognitive®, involves measuring “P300” brainwave responses to confirm that certain information is or is not present within a person's brain. (Complaint ¶10, Answer ¶10).”

96. Brainwave did not develop said technology. Everything of substance in the Dr. Maison BWS Software was simply copied and translated from Dr. Farwell’s Farwell Brain Fingerprinting 3.0 and 4.0. All of this was in the public domain. This is thoroughly documented in Dr. Farwell’s 12/27/2022 Affidavit and in EFS #24 and Dr. Maison Affidavit (EFS #89).

97. BWS Statement #6 is false, or at least is disputed, except for the first sentence. “6. The underlying technology utilizing P300 ‘brainwaves’ is not proprietary to Brainwave. (Complaint ¶11, Answer ¶11). However, the proprietary system developed by Brainwave has successfully addressed a number of problems which had previously prevented the effective use of P300-related technology by field agents. For instance, the code/algorithms developed by Brainwave’s technology team, led by Maison, eliminated ‘noise’ which could provide false positive or negative responses. (Complaint ¶14, Answer ¶14).”

98. “The proprietary system developed by Brainwave addressed a number of problems...” Every method, algorithm, and technique contained in the code Dr. Maison developed for BWS was ported directly from Dr. Farwell’s pre-existing Farwell Brain Fingerprinting 3.0 and 4.0. This has been thoroughly documented in Dr. Farwell 12/27/2022 Affidavit and the Exhibits thereto and Dr. Farwell Affidavit (EFS #24) and Dr. Maison Affidavit (EFS #89). An examination of the evidence now before this Court – in BWS TFS and Dr. Maison TFS now being subjected to software comparisons by Mindfire – will show that all of the code/algorithms for eliminating “noise” were copied directly from code provided to Dr. Maison by Dr. Farwell. In fact, the only algorithm for eliminating “noise” that is not common to several thousand other programs is the optimal digital filters that were first published in the field of event-related brain potential research by Dr. Farwell (Farwell et al. 1993²) and were translated line-for-line by Dr. Maison from Dr. Farwell’s code to BWS code. (Dr. Farwell’s 12/27/2022 Affidavit, Dr. Farwell’s Dropbox, Dr. Maison’s EFT, BWS EFT).

99. Moreover, the statement that “problems” had “previously prevented the effective use of P300-related technology by field agents” is patently false. Dr. Farwell and his colleagues, including other field agents with intelligence and counterterrorism agencies such as the FBI and the CIA, have been successfully using the Farwell Brain Fingerprinting P300-related technology in the field for over 20 years (EFS #80, Dr. Farwell’s 12/27/2022 Affidavit).

100. BWS statement #9 is true but misleading. “The source code developed by Maison for Brainwave consisted of approximately 1,000,000 lines of code (Tomkins Affirmation, Exhibit A, 51:3-51:12).”

101. Said source code did consist of approximately 1,000,000 lines of code. However, the code that BWS submitted to Codequiry was not all of the developed code. BWS left out of the comparison the code where Dr. Larry Farwell’s Application was totally different from BWS Software (both the original Dr. Maison BWS Software and the Fraudulently Modified BWS Software) because it communicated with a different headset. This resulted in a falsely exaggerated finding by Codequiry

² Farwell, L. A., Martinerie, J. M., Bashore, T. R., Rapp, P. E., and Goddard, P.H. (1993). Optimal digital filters for long latency event-related brain potentials. [*Psychophysiology*, 30, 3, 306-315](#)

regarding the similarity of the two software programs. (Dr. Farwell's 12/27/2022 Affidavit, Dr. Farwell's Dropbox, Dr. Maison's EFT, BWS EFT).

102. BWS statement #11 is incomplete and therefore misleading and disputed. "Maison's job at Brainwave wasn't necessarily to create every piece of code needed for Brainwave's system but to locate appropriate pieces of code and 'stitch' them together. (Tomkins Affirmation, Exhibit A, 37:13-38:9). Stitching together code is referred to as 'integration' of software code (Tomkins Affirmation, Exhibit A, 54:17-54:22)."

103. The integration or stitching together of open-source code undertaken by Dr. Maison involved implementing open-source software integration specifications provided by Dr. Farwell to Dr. Maison in the form of the integrated Farwell Brain Fingerprinting 4.0 and 3.0 and also the Brain Fingerprinting Specifications that Dr. Farwell provided to Dr. Maison (Dr. Farwell Dropbox). Mindfire's court-ordered software comparison according to the Statement of Work will necessarily involve accessing Dr. Maison TFS, Dr. Farwell Dropbox, and BWS TFS and noting what software programs reside there. This will definitively show that that he know-how for the software integration was open-source and provided by Dr. Farwell to Dr. Maison, and that it did not originate at BWS and was not developed by BWS.

104. BWS statement #12 admits that "Approximately ninety percent of the time spent by Maison in the development of Brainwave's code consisted of testing of the integrated code. (Tomkins Affirmation, Exhibit A, 53:6-53:21)."

105. 90% of the development time spent in testing is typical when code is being translated or ported from an existing application, as was the case here, where Dr. Maison was porting and translating the pre-existing code of Farwell Brain Fingerprinting 3.0 and 4.0 to a new platform and language to produce Dr. Maison BWS Software. When developing new software, the time spent in testing ranges from 10% to 35% of the total time (<https://devm.io/testing/time-estimation-for-software-testing-128078>).

106. BWS statement #19 is not entirely false; however, it is misleading and is disputed. "The improvements, assistance, modifications and assistance provided by Maison in 2019 were incorporated in the copy of the 'Farwell Brain Fingerprinting Program' provided by Farwell to the University at Canterbury in Christchurch, New Zealand for their continued use in late 2019 (Tomkins Affirmation, Exhibit B, 59:25-60:6)."

107. Dr. Maison ported Dr. Farwell's Farwell Brain Fingerprinting 4.0 to a new platform and translated it into a new language to produce Farwell Brain Fingerprinting 5.0, the Dr. Maison BWS Software. All of algorithms, methods, statistics, mathematics, know-how, features, computations, results, data, measurement, and analysis in the Dr. Maison BWS Software -- and even the entire content and layout of the user interfaces for both of the functions of the software, Brainwave Measurement User Interface and Brainwave Analysis User Interface -- all of this was in the public domain and was provided by Dr. Farwell to Dr. Maison in the form of Farwell Brain Fingerprinting 3.0 and 4.0, the Brain Fingerprinting Specifications, and Dr. Farwell's publications and the now expired patents on his inventions (Farwell Dropbox, BWS TFS, Dr. Maison TFS).³ In summary, everything that Dr. Maison provided Dr. Farwell with assistance on was in the public domain, and was provided to Dr. Maison by Dr. Farwell, not developed at BWS. All of this is definitively proven

³ The only part of the Dr. Maison BWS Software that was not in the public domain was the section that communicates with the BWS headset. Farwell Brain Fingerprinting 5.0 (and all other Dr. Farwell's versions) uses a different headset, and does not include that code.

by evidence now before this Court in Dr. Farwell's 12/27/2022 Affidavit, Dr. Farwell's Dropbox, Dr. Maison TFS, and BWS TFS.

108. For the same reasons specified immediately above, BWS statement #23 is misleading and is disputed. "The modifications provided by Maison in 2019 were also incorporated in the copy of the 'Farwell Brain Fingerprinting Program' provided by Farwell to the Forensic Science Laboratory in Delhi, India. (Tomkins Affirmation, Exhibit B, 116:5-116:13)."

109. BWS statement #25 is misleading and is disputed. "Brainwave and Farwell submitted competing bids for sale of P-300 systems to the Bangladesh government (Tomkins Affirmation, Exhibit B, 96:16-96:19)."

110. The tender from the RAB of the Bangladesh government was for a Farwell Brain Fingerprinting System, not BWS' iCognitive product. BWS bid for selling the government an iCognitive system instead was fraudulent. BWS' headset also had only one EEG channel, and the tender specified the three EEG channels contained in the Farwell Brain Fingerprinting System and specified by Bangladesh. BWS' iCognitive system fails to meet 26 of the specific Farwell Brain Fingerprinting Specifications that were specified by the Bangladesh government as requirements for the system to be bought (Dr. Farwell's 12/27/2022 Affidavit and Exhibit CAE thereto). Like all of BWS' other activities, this bid by BWS constituted fraud.

111. BWS statement #27 is misleading and is disputed. "Following their bid, Arshee and Farwell received notification from Brainwave that the software submitted in connection with the Bangladesh bid contained software proprietary to Brainwave (ECF #19-1), (Tomkins Affirmation, Exhibit B, 111:1-113:5)."

112. The word "notification" is inaccurate and misleading. "Notification" implies that whatever was being stated was a fact. Arshee will speak for themselves on this point. BWS wrote to Dr. Farwell and falsely claimed – without any evidence whatsoever – that "the software submitted in connection with the Bangladesh bid contained software proprietary to Brainwave." This was on the basis of hearsay from an unidentified source based on observation of the user interface. Note that the user interface for the software in the Bangladesh bid was not only identical to BWS software for both of the functions, Brainwave Measurement and Brainwave Analysis, the user interface presented in the Bangladesh bid for both of the program's functions was also identical to the Brainwave Measurement User Interface and the Brainwave Analysis User Interface of Farwell Brain Fingerprinting 3.0 and 4.0, which existed years before BWS existed, and which had been in online demonstrations years before BWS existed. Not only was the "notification" based solely on hearsay from an unidentified source, but the purported fact to which the "notification" referred was not a fact at all. It was a false accusation by BWS. It had no authority other than BWS' unsupported statement. Evidence now before this Court in BWS TFS, Farwell Dropbox, and Maison TFS will definitively prove that BWS' unfounded accusation in said "notification" was false. In any case, it is disputed (Dr. Farwell's 12/27/2022 Affidavit, Dr. Farwell's Dropbox, Dr. Maison EFT, and BWS EFT).

[Signature page immediately follows.]

Dated: Kingston, WA
December 28, 2022

Lawrence A. Farwell

Dr. Lawrence A. Farwell, Defendant

Sworn to before me this ____ day of December, 2022

State of Washington
County of Kitsap

On this, the 28 day of December, 2022, before me, a notary public, the undersigned officer, personally appeared Lawrence A. Farwell, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

In witness hereof, I hereunto set my hand and official seal.

Katie Aileen Olsen
Notary Public

